

ROBERT L. TRUE (D/B/A COMANCHE ENTERPRISES)  
PETROLEUM RESEARCH CORP., ET AL.  
SATELLITE 8303116

IBLA 86-1456

Decided March 17, 1988

Appeal from a decision of the Colorado State Office, Bureau of Land Management, cancelling oil and gas lease C-37593.

Appeal dismissed in part; decision affirmed.

1. Administrative Procedure: Generally--Board of Land Appeals--Rules of Practice: Appeals: Statement of Reasons

If an appellant's notice of appeal did not include a statement of reasons for the appeal, under 43 CFR 4.412(a), the appellant must file such a statement with the Board of Land Appeals within 30 days after the notice of appeal was filed. However, under 43 CFR 4.22(f), the Board may extend the time for filing a statement of reasons. Under 43 CFR 4.402(a), failure to file the statement of reasons within the time allowed (either by 43 CFR 4.412(a) or by the Board in an order granting an extension) subjects the appeal to summary dismissal. Where no statement of reasons is ever filed and no reason is offered for the failure to file, the appeal is properly dismissed.

2. Oil and Gas Leases: Assignments or Transfers--Oil and Gas Leases: Bona Fide Purchaser

To qualify for protection as a bona fide purchaser under 30 U.S.C. § 184(h)(2) (1982), and 43 CFR 3108.4, an assignee must have acquired his interest in good faith, for valuable consideration, and without notice of any violation of the law. Bona fide purchaser protection applies only where consideration has actually been paid prior to actual or constructive notice of an outstanding interest or defect in title. Where a money market account is established to secure the consideration paid by assignee, and where it is agreed that the consideration paid will be held until approval of assignment (which event never occurs), the assignee is not entitled to protection as a bona fide purchaser.

3. Oil and Gas Leases: Assignments or Transfers--Oil and Gas Leases:  
Bona Fide Purchaser

A "remote purchaser" of an oil and gas lease interest is one who purchases such interest from a bona fide purchaser of the lease. Where it is determined that the seller of the lease interest is not a bona fide purchaser, the buyer is not entitled to the protection afforded to a remote purchaser.

4. Oil and Gas Leases: Assignments or Transfers--Oil and Gas Leases:  
Bona Fide Purchaser

Where purchasers of an interest in an oil and gas lease enter into assignment agreements after BLM places notice of the possible cancellation of the lease in its official records, the purchasers have constructive notice of possible defects in the lease at the time they acquire their lease interests and, therefore, lack the good faith essential to an entitlement to protection as bona fide purchasers.

APPEARANCES: Earl H. Johnson, Esq., Denver, Colorado, for Robert L. True (d/b/a Comanche Enterprises); John A. Hutchings, Esq., Denver, Colorado, for Petroleum Research Corporation, et al. <sup>1/</sup>

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Robert L. True (d/b/a Comanche Enterprises) (Comanche), Petroleum Research Corporation, et al. (PRC), and Satellite 8303116 (Satellite), have appealed from the June 10, 1986, decision of the Colorado State Office, Bureau of Land Management (BLM), cancelling oil and gas lease C-37593, declaring Comanche not to be a bona fide purchaser of the lease, and disapproving pending assignments of record interest in the lease.

On December 9, 1983, BLM sent notice to Satellite that its simultaneous noncompetitive oil and gas lease application for parcel CO-198 had been drawn with first priority in the March 1983 drawing. On February 16, 1984, BLM issued lease C-37593 to Satellite, effective March 1, 1984.

On November 11, 1984, BLM placed a notice in the official lease file, stating as follows:

The Bureau of Land Management is currently conducting an investigation to determine whether the applications of various Satellite entities, ranging in number from 8301102 through 8309248, for simultaneous leases, both issued and still pending, were defective because of possible violations of the regulations, particularly with regard to the requirement to disclose the

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<sup>1/</sup> Counsel for Satellite 8303116 withdrew their appearance in this matter.

identity of other parties in interest and the prohibition against multiple filings. The Bureau may also commence an investigation to determine whether the Satellite entities or any of them are qualified to hold any interests in leases issued pursuant to the Acts of February, 1920 [sic] and August 7, 1947. Until these investigations are completed or closed, the interest of any Satellite entity in any of the following leases may be subject to rejection or cancellation, depending on the results of the investigations.

Lease C-37593 was included on the list that followed.

On January 18, 1985, BLM received for approval an assignment of 100 percent of record title from Satellite to Comanche. The certification by Satellite's representative of the assignment was dated on October 30, 1984, prior to BLM's placing its November 11, 1984, notice in the lease file. The request for approval of assignment by Comanche was not dated until January 10, 1985.

On February 4, 1985, BLM received for approval an assignment of 100 percent of record title from Comanche to PRC. The certification by Comanche's representative was dated December 15, 1984, and the request for approval of assignment by PRC was dated January 30, 1985. Subsequently, from April 1985 through November 1986, BLM received many assignments of interest from PRC to individuals for 40-acre parcels from the leasehold. These assignments were executed by PRC from March 1985 forward. BLM withheld action on all these requests for approval of assignment. 2/

On May 1, 1986, BLM advised these parties that it had determined that lease C-35793 must be cancelled. However, BLM noted that it appeared that Comanche might qualify as a bona fide purchaser of the lease interest, as the assignment was evidently executed prior to BLM's placing of notice of possible intent to cancel this lease (and others) in November 1984. Accordingly, BLM required Comanche to furnish evidence establishing that Comanche was a bona fide purchaser of Satellite's lease interest.

On May 23, 1986, Comanche responded, explaining that it had purchased the lease from Mountain Empire Energy Group, Inc. (Mountain Empire), which was acting as a "non-exclusive lease broker/agent on behalf of Satellite." 3/ The details of the payment of consideration by Comanche for

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2/ On Aug. 16, 1985, BLM did deny approval of a putative assignment of 40 acres from PRC to Richard J. and Margaret L. Seltzer (Trustees), as these lands were not included in the leasehold.

3/ The response was actually filed by Mountain Empire on Comanche's behalf. However, it appears, as averred in the response, that Mountain Empire and Comanche are, in fact, entirely separate legal entities. It is likely that Mountain Empire, as the agent for the sale of the lease from Satellite to Comanche, prepared this response as a service to its client

the lease are critical to our disposition of this matter and are, accordingly, set out below as stated by Comanche in its response:

Consideration was paid by Comanche Enterprises to Mountain Empire in the amount of \$4,417.44 (\$3.25 per acre x 1359.21 acres). A money market account \* \* \* was set-up at Union Bank and Trust to secure the consideration paid by Comanche \* \* \*. This money market was set-up due to a pending investigation and notice of possible intent to cancel certain leases filed on November 13, 1984. In order to protect the purchaser, it was requested that the consideration paid be held until approval of assignment.

Comanche argued that the transaction between it, as buyer, and Satellite, as seller, was completed in its entirety prior to BLM's November 13, 1984, notice that lease C-37593 might be canceled. It stressed that the agreement for the sale and purchase had been entered into, and that the assignment had been executed, prior to the notice of investigation. It urged BLM to recognize it as a bona fide purchaser under 43 CFR 3108.4

On June 10, 1986, BLM issued its decision cancelling the lease and ruling that Comanche was not a bona fide purchaser. BLM ruled as follows:

It is readily apparent from the material submitted [by Comanche] that Satellite 8303116's broker [Mountain Empire] has not treated the funds as if they were the property of Satellite 8303116, but \* \* \* is holding the payment in a form of escrow until the final disposition of Satellite 8303116's and Comanche Enterprises' interest in the lease is determined.

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Since the purchase of the lease by Comanche Enterprises is incomplete and subject to "approval of assignments," we conclude that Comanche Enterprises is not entitled to any protection as a bona fide purchaser.

At the same time, BLM disapproved all subsequent assignments of record title, noting that the assignment from Comanche to PRC was executed more than a month after the notice was placed in the casefile indicating that the lease might be subject to cancellation. BLM concluded that neither PRC nor the individuals to whom PRC made assignments were entitled to protection as bona fide purchasers.

Satellite, Comanche, and PRC (along with parties with unapproved assignments from PRC) appealed BLM's decision to this Board.

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fn. 3 (continued)

Comanche, in an effort to prevent the voiding of the sale. Mountain Empire also served as broker for the subsequent assignment of Comanche's interest to PRC.

[1] The appeal of Satellite 8303116 must be dismissed. A statement of reasons did not accompany its notice of appeal. Under 43 CFR 4.412(a), if the notice of appeal does not include a statement of reasons for the appeal, the appellant must file such a statement with this Board within 30 days after the notice of appeal was filed. Thus, the statement of reasons was originally due on August 25, 1986. However, under 43 CFR 4.22(f), the Board may extend the time for filing a statement of reasons. The time for Satellite to file its statement of reasons was extended by order of this Board until December 5, 1986.

No statement of reasons was ever received from Satellite, and no explanation has been given for its failure to file. Failure to file the statement of reasons subjects the appeal to summary dismissal. 43 CFR 4.402(a).

Neither of the two remaining appellants, who have perfected their appeals, have challenged BLM's decision insofar as it ruled that lease C-37593 should be canceled on account of violations committed by Satellite 8303116 in applying for the lease interest. Accordingly, there is no need to review the propriety of BLM's decision insofar as it cancelled Satellite's interest in this lease. However, we note that the Board has recently affirmed BLM's decisions cancelling oil and gas leases issued to Satellite groups in situations similar to the instant case. Satellite 8307138, 99 IBLA 307 (1987); Satellite 8309119, 99 IBLA 301 (1987); Satellite 8211104, 89 IBLA 388 (1985), aff'd, Satellite 8301123 v. Hodel, 648 F. Supp. 410 (D.D.C. 1986).

[2] Comanche has appealed from BLM's decision insofar as it ruled that Comanche was not entitled to protection afforded to bona fide purchasers of Federal oil and gas leases by 30 U.S.C. | 184(h)(2) (1982), and 43 CFR 3108.4. To qualify for protection as a bona fide purchaser, an assignee must have acquired his interest in good faith, for valuable consideration, and without notice of any violation of the law. Winkler v. Andrus, 614 F.2d 707, 711 (10th Cir. 1980); Southwest Petroleum Corp. v. Udall, 361 F.2d 650 (10th Cir. 1966). Bona fide purchaser protection applies only where consideration has actually been paid prior to actual or constructive notice of an outstanding interest or defect in title. Bernard Kosik, 70 IBLA 373, 375 (1983); Richard W. Eckels (On Reconsideration), 65 IBLA 76, 77 (1982). <sup>4/</sup>

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<sup>4/</sup> We ruled as follows in Richard W. Eckels (On Reconsideration), supra at page 77:

"The general rule is that bona fide purchaser protection applies only where consideration has actually been paid, and an unperformed obligation is not value sufficient to entitle the obligor to bona fide purchaser protection. 77 Am. Jur. 2d, Vendor and Purchaser | 706 (1975); see McDonald v. Belding, 145 U.S. 492 (1892). The court in Winkler v. Andrus, 614 F.2d 707, 712 (10th Cir. 1980), expressly recognized that the date of payment of consideration is the relevant date for determination of the bona fides of the assignee according to the general rule, but did not rule on the point in issuing its decision since there was no distinction in the knowledge of

Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of the assignment. 43 CFR 3108.4; Winkler v. Andrus, *supra*; David Burr, 56 IBLA 225 (1981). Thus, in order to qualify for protection as a bona fide purchaser, Comanche must have actually paid consideration to Satellite prior to November 13, 1984, the date BLM placed notice of possible cancellation of the lease in the casefile.

There is no dispute that consideration for the lease sale was not paid directly to Satellite by Comanche. Rather (in Comanche's words), "a money market account \* \* \* was set-up \* \* \* to secure the consideration paid by Comanche. \* \* \* In order to protect the purchase, it was requested that the consideration paid be held until approval of assignment." Comanche paid Mountain Empire, the broker for Satellite, consideration for the assignment. However, Mountain Empire did not transfer those funds to Satellite; rather, Mountain Empire established a money market fund in its own name and subsequently acted more like it were the agent for Comanche, holding the funds in escrow pending resolution of the lease status.

Thus, it is clear that Comanche did not pay consideration to Satellite for the purchase of record title to lease C-37593 prior to BLM's placing notice of possible cancellation of the lease in the official case file in November 1984. Indeed, it appears that Comanche has never paid consideration to Satellite, as the transfer of funds to Satellite was expressly conditioned on BLM's approving the assignment, an event that has never occurred. In these circumstances, BLM properly denied the assignment from Satellite to Comanche.

[3] PRC has appealed BLM's decision insofar as it denied approval of the assignment to it from Comanche. PRC argues that it and its assignees are entitled to protection from cancellation either as a bona fide purchaser or as a "remote purchaser" from a bona fide purchaser of the lease. A "remote purchaser" is one who purchases an oil and gas lease from a bona fide purchaser. Home Petroleum Corp., *supra* at note 4. Since we have determined that Comanche was not a bona fide purchaser, PRC and its assignees cannot be afforded the protection afforded to a remote purchaser.

[4] Nor can PRC or its assignees be regarded as bona fide purchasers, as they entered into assignment agreements after November 13, 1984, the

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fn. 4 (continued)

defects in the lease possessed by assignee on the date of the assignment and assignee's knowledge on the date when consideration was paid. The corollary to the general rule requiring payment of consideration is that receipt by the purchaser of actual or constructive notice of an outstanding interest or defect in title before payment of the obligation which the purchaser has assumed will preclude entitlement to bona fide purchaser status even if the assignee thereafter pays the obligation. 77 Am. Jur. 2d, Vendor and Purchaser | 706 (1975), see Home Petroleum Corp., 54 IBLA 194, 88 I.D. 479 (1981), aff'd sub nom. Geosearch v. Watt, Civ. No. C81-208K (D. Wyo. Jan. 11, 1982)."

date BLM placed notice of the possible cancellation in its official records. In these circumstances, PRC and its clients had constructive notice of the defects in the lease at the time they acquired their lease interests and, therefore, lack the good faith essential to an entitlement to protection as bona fide purchasers. 43 CFR 3108.4; Winkler v. Andrus, *supra*; David Burr, *supra*.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Wm. Philip Horton  
Chief Administrative Judge

We concur:

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Bruce R. Harris  
Administrative Judge

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C. Randall Grant, Jr.  
Administrative Judge